REMARKS

This Amendment is filed in response to the Office Action mailed on December 14, 2005. All objections and rejections are respectfully traversed.

Claims 1-23 are in the case.

Claim 23 was amended to correct typographical errors.

No new claims were added.

The Office Action mailed on December 14, 2005, asked for an explanation as to why claim 23 is patentable in view of the art cited.

At paragraphs 1-15 of the Office Action mailed on June 20, 2005, claims 1-22 were rejected under 35 U.S.C. §102(e) as being anticipated by Dennis, US Patent No. 6,792,556 issued on September 14, 2004, hereinafter Dennis

The present invention, as set out in representative claim 23, comprises in part:

23. Electromagnetic signals propagating on a computer network, comprising:

said electromagnetic signals carrying instructions for execution on a processor for the practice of storing information in a computer data storage system comprising,

storing a new kernel image on a storage device;

copying a current boot kernel from a current boot kernel location to a last known good kernel location; and

copying the new kernel image to the current boot kernel location.

Dennis discloses a system for boot record recovery. The system determines if a boot record is virus free. If the boot record is virus free, then a snapshot of the clean boot record is stored in non-volatile memory. The non-volatile memory can be a partition of various local drives, such as C:, D:, or E:. (Dennis Col. 5, lines 63-65) During the boot process, the contents of the current boot record are compared with the snapshot of the boot record to determine whether a mismatch exists. If a mismatch exists, then the user determines which boot record to use. If there is not a mismatch, then the boot record is used.

Applicant respectfully urges that Dennis has no disclosure of Applicant's claimed novel ***storing a new kernel image on a storage device;***

copying a current boot kernel from a current boot kernel location to a last known good kernel location; and

copying the new kernel image to the current boot kernel location.

Further, Dennis determines if a boot record is virus free. If the boot record is virus free, then a snapshot of the clean boot record is stored in non-volatile memory. Then, the contents of the current boot record are compared with the snapshot of the boot record to determine whether a mismatch exists. If a mismatch exists, then the user determines which boot record to use. If there is not a mismatch, then the boot record is used.

Applicant respectfully urges that Dennis is silent concerning Applicant's claimed novel ***storing a new kernel image on a storage device; copying a current boot kernel from a current boot kernel location to a last known good kernel location; and copying the new kernel image to the current boot kernel location***.

That is, Denis has no disclosure of Applicant's claimed ***storing a new kernel image on a storage device***, and then later ***copying the new kernel image to the current boot kernel location***. Dennis simply generates determines if a boot record is virus free, and if it is, then creating a snapshot of the boot record. If the snapshot and a later copy of the boot record disagree, then a user chooses which boot record to use.

Accordingly, Applicant respectfully urges that Dennis is legally precluded from anticipating Applicant's claimed novel invention under 35 U.S.C. 102(e) because of the absence in Dennis of any disclosure of Applicant's claimed novel ***storing a new kernel image on a storage device; copying a current boot kernel from a current boot kernel location to a last known good kernel location; and***

copying the new kernel image to the current boot kernel location.

Also, original Claim 17 is in substantially the same form as Claim 23, except that in Claim 23 the method steps are implemented in a computer program which is being transferred over a computer network. The form of Claim 23 recites the inventive steps being implemented in a computer program, and the computer program being transferred over a computer network.

Further, Applicant respectfully urges that claim 23 is patentable in the form presented, that is as a computer program being transferred over a computer network. This form of claim makes an infringer a direct infringer, where the infringer sells copies of the patented method by providing a web page on the Internet for downloading a computer program to practice the method.

Still further, Claim 23 is patentable under 35 U.S.C. 101 for the following reasons. Applicant respectfully points out that MPEP 2106 IV, B. 1. (c) (Page 2100-14 of the Eighth Edition) states:

> "Natural Phenomena Such as Electricity and Magnetism.
>
> . . . However, a signal claim directed to a practical application of electromagnetic energy is statutory regardless of its transitory nature."

Applicant respectfully points out that the form of Claim 23 meets the "practical application" requirement of MPEP 2106 IV, B, 1 (c) because the claim is to: "***said elec-***

tromagnetic signals carrying instructions for execution on a processor for the practice of the method", and then the method is that spelled out in method steps.

Accordingly, Applicant respectfully urges that Claim 23 meets all statutory requirements of 35 U.S.C. 101, particularly as further set out in MPEP 2106 IV, B, 1 (c).

All independent claims are believed to be in condition for allowance.

All dependent claims are dependent from independent claims which are believed to be in condition for allowance. Accordingly, all dependent claims are believed to be in condition for allowance.

Favorable action is respectfully solicited.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,

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